IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4410 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAPOORCHAND MAGANLAL TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR MB FAROOQUI for Petitioner

MR KP RAVAL, APP for Respondent No. 1

MR JC VYAS for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22/03/2000

ORAL JUDGEMENT

1. This is an application under section 482 of the Criminal Procedure Code at the instance of the original accused no.1, who prays for quashing the complaint and process issued against him, at the instance of respondent no.2 complainant.

2. The complainant had filed a criminal complaint in the court of Judicial Magistrate (First Class), Deesa alleging that the present applicant as accused no.1 inter alia, had committed offences under sections 403, 406, 408, 465, 468, and 477-A read with section 114 of IPC. It is pertinent to note that this complaint was filed on 21st October 1992. The learned Magistrate undertook the investigation on the same day, and after examining the complainant and his witness under section 200 of Cr.PC, process was directed to be issued against the applicant inter alia as accused no.1 on the same day.

3. The present applicant as original accused no.1 seeks by way of the present application to have the complaint and the process issued thereon quashed and set aside. From the facts and circumstances brought on record of the present application, and also from the averments made in the complaint itself, it becomes apparent that the complainant and the present applicant were in business together as partners of a partnership firm, that disputes arose amongst them as regards the conduct of the partnership business, that ultimately the disputes were settled by the intervention of the arbitrators, and what is most relevant is that this resulted in a settlement between the complainant and the present applicant. This settlement is dated 20th December 1991 and is executed by these two parties on a stamp paper of Rs.10/-. This settlement sets out the rights and obligations of various parties in considerable detail. Thus, whatever be the disputes between these parties as partners of the erstwhile partnership firm, the disputes have been settled and recorded in the said settlement at Annexure-V to the present application. The liability of the present applicant is also set out specifically therein, whereunder he is required to make specific payment by specific dates to the accused. It also transpired that the cheques for the requisite amounts (three in all) were in fact issued, and whereas one of the cheques was honoured, the other two were dishonoured leading to further complaints being filed by the complainant under section 138 of the Negotiable Instruments Act. However, that is a separate issue with which I am not concerned in the present application.

4. The main contentions raised by the learned counsel for the applicant in the present application are two-fold. One, that all the incidents complained of and referred to in the complaint in question are pertaining to the disputes between the erstwhile partners which ultimately came to be settled by a written document. The

rights of the parties were therefore crystalised in the settlement arrived at between them, and this settlement is dated 20th December 1991, which cannot be by-passed or ignored by filing a complaint as late as 21.10.1992 arising from prior disputes. The filing of this complaint, and similar complaints and different complaints arising from different individual transactions or different account entries has been resorted to by the complainant merely for the purpose of harassment of the present applicant. On the admitted facts of the case it would appear that the submissions made by the learned counsel for the petitioner are justified. It could well be that prior to settlement of the dispute, the disputes may have arisen in respect of a hundred different account entries. However, once the disputes are settled and the rights of the parties are crystalised in a written document, the parties are governed by that document and it would not be open to either party to refer back to the period prior to settlement, refer to each of the hundred disputed entries, and file a hundred different complaints on the basis of one entry per complaint. It is not being suggested that this is precisely what is being resorted to by the complainant. However, it does appear that the complainant has chosen to ignore the settlement to which he is a party, and the complaint obviously pertains to the transactions prior to the settlement. Thus when the complainant chooses to file a complaint under these circumstances, it would appear to be motivated and calculated only to harass the present applicant.

5. Even otherwise looking to the nature of the complaint, the disputes referred to therein are entirely of civil nature, and merely by invoking specific provisions of the Indian Penal Code would not convert it into independent criminal acts and offences.

6. In view of the above I am satisfied that the continuation of the prosecution on the basis of the aforesaid complaint would be an abuse of process of the court.

7. In the premises aforesaid the complaint filed by the respondent no.2 herein at Annexure-VI to the petition, and the order passed by the learned Magistrate dated 21st October 1992 issuing process thereon are both quashed and set aside. Rule is made absolute accordingly.

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